

1 IN THE CIRCUIT COURT OF
2 OHIO COUNTY, WEST VIRGINIA

3 - - -

4 IN RE: TOBACCO LITIGATION :
5 (MEDICAL MONITORING CASES). : CASE NO. 00-C-6000

6 - - -

7 Deposition of ROBERT A. BUDINSKY, R.Ph.,
8 Ph.D., a witness herein, taken by the plaintiffs as
9 upon examination pursuant to Rule 30 of the West
10 Virginia Rules of Civil Procedure and pursuant to
11 Notice to Take Deposition and stipulations
12 hereinafter set forth by telephonic conference,
13 with Michael Suffern, Esq., and Lynn Oliver Frye,
14 Esq., the witness and court reporter being present
15 at the offices of Dinsmore & Shohl, 1500 Chemed
16 Center, 255 East Fifth Street, Cincinnati, Ohio, at
17 9:00 a.m. on Thursday, August 24, 2000, before Lisa
18 Conley, RMR-CRR, a notary public within and for the
19 State of Ohio.

20 - - -

21

22

23

24

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 APPEARANCES:

2 On behalf of the Plaintiffs: (by phone)

3 Gregory Lofstead, Esq.

4 of

5 Ness, Motley, Loadholt, Richardson & Poole

6 28 Bridgeside Boulevard

7 PO Box 1792

8 Mount Pleasant, South Carolina 29465

9 On behalf of the Plaintiffs:

10 David Chervenick, Esq. (by phone)

11 of

12 Goldberg, Persky, Jennings & White

13 1108 Third Avenue

14 Huntington, West Virginia 25701

15 On behalf of Brown & Williamson Tobacco

16 Corporation:

17 Michael J. Suffern, Esq.

18 of

19 Dinsmore & Shohl, LLP

20 1900 Chemed Center

21 255 East Fifth Street

22 Cincinnati, Ohio 45202

23 and

24 Lynn Oliver Frye, Esq.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

3

1 of

2 Jackson & Kelly, PLLC

3 1600 Laidley Tower

4 PO Box 553
5 Charleston, West Virginia 25322
6 On behalf of the Defendants, Philip Morris
7 Companies, Inc., and Philip Morris, Incorporated:
8 Sam Klein, Esq. (by phone)
9 of
10 Allen, Guthrie & McHugh
11 1300 Bank One Center
12 PO Box 3394
13 Charleston, West Virginia 25333-3394

14 - - -

15 S T I P U L A T I O N S

16 It is stipulated by and among counsel for
17 the respective parties that the deposition of
18 ROBERT A. BUDINSKY, R.Ph., Ph.D., a witness herein,
19 may be taken as upon examination pursuant to the
20 Rule 30 of the West Virginia Rules of Civil
21 Procedure, and pursuant to Notice to Take
22 Deposition; that the deposition may be taken in
23 stenotypy by the notary public-court reporter and
24 transcribed by her out of the presence of the

A. WILLIAM ROBERTS, JR., & ASSOCIATES

4

1 witness; that the transcribed deposition is to be
2 submitted to the witness for his examination and
3 signature, and that signature may be affixed out of
4 the presence of the notary public-court reporter.

5 - - -

6 I N D E X

7 WITNESS EXAMINATION

8 Robert A. Budinsky, R.Ph., Ph.D. 6

9 - - -

10 E X H I B I T S

11 BUDINSKY DEPOSITION EXHIBITS MARKED

12 No. 1, a copy of a multi-page document

13 entitled "Curriculum Vitae." 9

14 No. 2, a copy of a 3-page document

15 entitled "A Frank Statement to the

16 Public by the Makers of Cigarettes,"

17 bates no. 680262216 through 2218. 45

18 - - -

19

20

21

22

23

24

A. WILLIAM ROBERTS, JR., & ASSOCIATES

5

1 MR. SUFFERN: This is Michael

2 Suffern, S U F F E R N, from Dinsmore & Shohl in

3 Cincinnati representing Brown & Williamson Tobacco

4 Corporation. Lynn.

5 MS. FRYE: Lynn Oliver Frye from

6 Charleston, West Virginia, also representing Brown

7 & Williamson.

8 MS. MORELLIN: Eileen Morellin from

9 Chadmore & Park.

10 MR. KLEIN: Sam Klein, K L E I N,
11 representing Philip Morris.

12 MR. CHERVENICK: David Chervenick, C
13 H E R V E N I C K, representing the Plaintiffs, and
14 I'm from Goldberg, Persky, P E R S K Y, Jennings &
15 White.

16 MR. LOFSTEAD: This is Greg
17 Lofstead, L O F S T E A D, representing the
18 plaintiffs. I'm from Ness, Motley, Loadholt,
19 Richardson & Poole.

20 MR. SUFFERN: It would appear that
21 we have everybody identified. So, Mr. Lofstead, if
22 you're ready, please proceed.
23 (Witness sworn.)

24 MR. LOFSTEAD: Dr. Budinsky, my name

A. WILLIAM ROBERTS, JR., & ASSOCIATES

6

1 is Greg Lofstead. As I just indicated, I'm an
2 attorney with Ness, Motley, and I will just state
3 at the outset, since we're on speaker phone,
4 hopefully, we won't have any problems, but if you
5 don't understand a question, please let me know and
6 I'll speak up or rephrase. We can take a break at
7 any time, just let me know, and I'll be happy to
8 accommodate you. I'm sick today, so I may end up
9 taking a break or two, but, hopefully, we'll make
10 it through pretty fast.

11 ROBERT A. BUDINSKY, R.Ph., Ph.D.

12 of lawful age, a witness herein, being first duly
13 sworn as hereinafter certified, was examined and
14 deposed as follows:

15 EXAMINATION

16 BY MR. LOFSTEAD:

17 Q. Why don't you go ahead and state your
18 name for the record, please.

19 A. Okay. It's Robert A. Budinsky, B as
20 in Bob, U as in uncle, D I N S K Y.

21 Q. Have you ever been depose before?

22 A. Yes, I have.

23 Q. Can you tell me the approximate date?

24 A. There are a number of depositions

A. WILLIAM ROBERTS, JR., & ASSOCIATES

7

1 throughout the last 12 years I've worked as a
2 consultant. I can't give you the actual dates. I
3 do have that information back at my office.

4 Q. Can you tell me a little bit about
5 the nature of the actions you were involved in?

6 A. We have a consulting firm that does a
7 number of toxicological projects, for a better
8 word, environmental work, product stewardship,
9 industrial health, worker safety, litigation
10 support and expert testimony.

11 Q. Has any of that testimony been on
12 behalf of the tobacco industry?

13 A. This is the first time.

14 Q. Have you ever testified at trial
15 before?
16 A. Yes, I have.
17 Q. And you have that information as
18 well?
19 A. That will all be included in the
20 outline.
21 Q. Okay. Do you know what the
22 Blankenship lawsuit is about?
23 A. To be honest with you, no, I don't.
24 I mean, I've read the complaint, but my role is

A. WILLIAM ROBERTS, JR., & ASSOCIATES

8

1 very limited.
2 Q. Have you read anything else besides
3 the complaint?
4 A. With respect to the materials
5 provided to me by the attorneys?
6 Q. Yes.
7 A. Yes. The HIPO studies and documents
8 related to HIPO, the Surgeon General's report
9 starting in 1964, and then on my own I've acquired
10 scientific papers, review articles, textbook
11 chapters to do a further evaluation.
12 Q. What subject areas related to this
13 lawsuit do you believe you might have relevant
14 information?
15 A. It pertains to the validity of the
16 HIPO studies and their data and any conclusions

17 that can be drawn from the HIPO studies.

18 Q. How much time have you spent
19 preparing to testify in this case?

20 A. Including meetings and everything
21 else, I probably have spent, I would say, at least
22 three weeks' worth of time.

23 Q. And when did you first hear about the
24 Blankenship case?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

9

1 A. I was contacted in the spring of
2 '99.

3 MR. LOFSTEAD: Let me backtrack a
4 little bit. Why don't we go ahead -- I sent some
5 exhibits to the court reporter, and Exhibit 1 is
6 your CV. I'd just like to look at that for a
7 second.

8 MR. SUFFERN: Just give us a second
9 here, Mr. Lofstead, so we can open the FedEx box.

10 MR. LOFSTEAD: I believe my
11 secretary put three copies of --

12 MR. SUFFERN: Looks like three
13 separate stacks, so we'll put one stack in front of
14 you, Dr. Budinsky, and one for me and one for Lynn,
15 and we'll give them to the court reporter as you
16 direct us. Go ahead, Mr. Lofstead.

17 (Budinsky Deposition Exhibit No. 1 was marked for
18 identification.)

19 BY MR. SUFFERN:

20 Q. I believe no. 1 is the CV. Do you
21 have that one in front of you?

22 A. Yes, I do.

23 Q. Okay. Why don't we just look through
24 your various positions here. You're currently

A. WILLIAM ROBERTS, JR., & ASSOCIATES

10

1 working as a toxicologist at ATRA Environmental and
2 Occupational Services?

3 A. No, this is an older CV. This has to
4 date back to last summer. I have a more current
5 CV.

6 Q. Okay.

7 A. And the reason why I'm offering that
8 is that we've been purchased by an engineering
9 firm, so we're no longer ATRA as a consulting
10 group. We're now part of this large engineering
11 firm.

12 Q. Okay. So I guess let's start
13 present, what is your job title and position?

14 A. I'm still a toxicologist. I'm an
15 employee of BBL, that's Blazen, Blacken & Lee, the
16 engineering group.

17 Q. What are your job responsibilities
18 there?

19 A. Oh, very varying. We have what's
20 called a science group within the engineering firm,
21 and our role is to develop and carry out business

22 with respect to product stewardship, environmental
23 work, ecological evaluations, and then litigation
24 support and expert testimony, so pretty much the

A. WILLIAM ROBERTS, JR., & ASSOCIATES

11

1 same as it has been.

2 Q. When you were vice
3 president/toxicologist at TERRA from '95 to '96,
4 did you pretty much do the same thing?

5 A. Yes, pretty much the same thing.

6 Q. Whenever you say "litigation
7 support," why don't you tell me a little bit more
8 about that.

9 A. That's when an attorney will contact
10 me and hire me to assist him with understanding
11 technical issues in the case. I'm not a testifying
12 witness, but my role is to educate them and get
13 them prepared for the science behind the
14 allegations.

15 Q. And from July 1988 to August '95,
16 toxicologist at TERRA, Inc., that was pretty much
17 the same thing?

18 A. Same thing, yes.

19 Q. I see you were here in my hometown of
20 Charleston, South Carolina, from October '86 to
21 July '88. Why don't you tell me a little bit about
22 that position.

23 A. Quite frankly, I'm jealous that you

24 get to live there and I don't. But I did a

A. WILLIAM ROBERTS, JR., & ASSOCIATES

12

1 post-doctoral fellowship with David Jollow at MUSC
2 for two years.

3 Q. What exactly did that entail?

4 A. Well, that's just conducting basic
5 research, working on the grants that Dr. Jollow had
6 at that time, numerous, numerous rodent studies,
7 evaluating the project I was working on, hemolytic
8 anemia, looking at the way that drugs damage and
9 affect red blood cells, the mechanisms underneath
10 all of that and conducting tests to study test
11 hypothesis acetaminophen drug toxicity that they
12 had going on in the lab.

13 Q. Did any of that work involve
14 nicotine?

15 A. No.

16 Q. So I guess you got out of Charleston
17 before Hurricane Hugo made its entrance?

18 A. Just one year, yeah.

19 Q. Okay. Let's see, teaching assistant,
20 University of Cincinnati. Actually, before that
21 you were a pharmacist at Veteran's Hospital from
22 '87 to '88, then a teaching assistant, University
23 of Cincinnati. What did you do as a teaching
24 assistant?

1 A. Basically, you work under the
2 direction of one of the faculty to assist them with
3 running laboratories, grading tests, teaching,
4 essentially slave labor.

5 Q. All right. Now, in your expert
6 disclosure, boy, I don't know if I sent that, but
7 I'll just quote this. It says, "He may also
8 testify as to other facts and opinions he may
9 possess as an expert concerning other issues that
10 may be raised at trial by witnesses called by the
11 plaintiff or by codefendants that fall within Dr.
12 Budinsky's professional expertise."

13 Can you tell me what other issues in
14 this trial that may fall within your professional
15 expertise?

16 A. Well, that's a broad question, but I
17 can try to narrow it down a little bit for you. I
18 understand that Dr. Hengefield and Dr. Benowitz are
19 going to testify in this matter, and if they have
20 opinions about HIPO and how it relates to the
21 question of the Surgeon General's reports, et
22 cetera, I will be responding the best I can and
23 when appropriate to their opinions. And I think
24 Dr. Feingold has also been listed; although, I

1 don't know if he's going to be a witness on your
2 behalf.

3 Q. So if Dr. Hengefield or Dr. Benowitz
4 fail to mention HIPO in their testimony, will you
5 be testifying?

6 MR. SUFFERN: Objection. It's a
7 pretty speculative question. Go ahead and answer,
8 if you can, Dr. Budinsky.

9 A. Well, I'm not an attorney, but as I
10 understand depositions, if you don't ask a question
11 about HIPO and there's no answer, then you don't
12 know if they're going to testify or not, but I
13 suspect I will be on standby in case their opinions
14 do address HIPO.

15 Q. Is there anything else you plan to
16 add or update on your CV at this time?

17 A. Not at this time. You will get a
18 fresh copy that's probably up-to-date to this
19 summer. I'll send you one.

20 Q. How much are you being paid by Brown
21 & Williamson right now?

22 MR. SUFFERN: Object to the
23 characterization of the source of his remuneration
24 in this case.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

15

1 A. Well, what the company does is charge
2 an hourly rate for my services. I am familiar with

3 the normal rate, which is 185 an hour, and I
4 believe they have a policy about depositions and
5 trial testimony, it may be 200, 225 an hour, but I
6 simply don't know at this time what that is.

7 Q. And how many hours did you say you've
8 spent on this case, approximately?

9 A. Well, I'm guessing right now about
10 three weeks' worth.

11 Q. Have you ever authored any articles
12 dealing specifically with nicotine addiction?

13 A. No.

14 Q. Have you ever conducted any research
15 related to nicotine addiction?

16 A. No, I have not.

17 Q. So you won't be an expert on nicotine
18 addiction in this case?

19 A. I will be an expert on nicotine
20 addiction as it relates to the HIPO studies, their
21 data, conclusions you can draw from the HIPO
22 studies, that's pretty much my role; but I will not
23 be addressing addiction with respect to social
24 factors, psychological factors.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

16

1 Q. Do you recall -- You may have
2 answered this, but I don't recall the answer. Do
3 you recall when you first heard of project HIPO?

4 A. It would have been in late spring of

5 '99.

6 Q. Have you heard about the other
7 studies, I'm talking about "Tentative Hypothesis"
8 and "The Fate of Nicotine in the Body," around the
9 same time?

10 MR. SUFFERN: Object. I'm sorry,
11 just a second, Doctor. I just object to the
12 characterization of those documents as studies, but
13 go ahead.

14 A. Yes, that's my point too. "Tentative
15 Hypothesis" is not a study, but I did become aware
16 of that document around the same time. Actually,
17 the first time I actually saw these documents was
18 probably July of '99.

19 Q. Have you ever written an article
20 about the HIPO research documents?

21 A. No, I have not.

22 Q. Have you ever lectured about project
23 HIPO?

24 A. No, I have not.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

17

1 Q. Did you participate in the HIPO
2 research?

3 A. No. I'm not that old.

4 Q. Did you ever meet Sir Charles Ellis?

5 A. No, I have not.

6 Q. Did you ever meet Addison Yeaman?

7 A. No, I have not.

8 Q. Have you ever met Tony McCormick?
9 A. No.
10 Q. And you say you reviewed the studies
11 in July of '99?
12 A. That would be the first time I saw
13 the studies. I believe I reviewed them in July or
14 maybe August.
15 Q. Okay. Who initially contacted you
16 regarding these studies?
17 A. Dr. Woodside did.
18 Q. Who's Dr. Woodside?
19 A. Frank Woodside, he's an attorney with
20 Dinsmore & Shohl.
21 Q. Did you review the studies at his
22 request?
23 A. Yes, I did.
24 Q. Did you have a meeting before you

A. WILLIAM ROBERTS, JR., & ASSOCIATES

18

1 reviewed the studies?
2 A. Yes, I did.
3 Q. Who all did you meet with?
4 A. Mike Suffern was there, Frank
5 Woodside and MaryJo Middelhoff.
6 Q. Okay. Who's MaryJo Middelhoff?
7 A. She is another Dinsmore & Shohl
8 attorney.
9 Q. So you met with three attorneys. How

10 many meetings have you had?
11 A. I think approximately four or five,
12 probably five meetings in total.
13 Q. Have you ever discussed project HIPO
14 with Scott Appleton?
15 A. I don't know him.
16 Q. Do you know Sharon Boytz?
17 A. No.
18 Q. Do you know Graham Reed?
19 A. No.
20 Q. Lance Reynolds?
21 A. No.
22 Q. Jay Kendrick Wells?
23 A. No.
24 Q. Bruce Scheffler?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

19

1 A. No.
2 Q. Have you ever reviewed any of the
3 prior testimony by B&W witnesses in preparation for
4 your anticipated testimony in this case?
5 A. I've not seen any.
6 Q. I believe you said, other than the
7 actual project HIPO report, you reviewed some
8 related documents?
9 A. Yes.
10 Q. Could you please describe for me the
11 related documents?
12 A. We can start with the 1964 Surgeon

13 General's report, and we can end I guess with the
14 1988 Surgeon General's report, and there are a
15 number of other Surgeon General reports that I
16 reviewed in between '64 and '88 and I believe
17 afterwards. I've also reviewed a number of
18 scientific publications, studies that relate to
19 HIPO, as well as textbooks and review articles.

20 Q. Could you be, if possible, a little
21 more specific on the studies you've reviewed?

22 A. Well, to give you an example, HIPO I
23 deals with the question of asorbic acid depletion
24 in the adrenal glands. So in my review I looked at

A. WILLIAM ROBERTS, JR., & ASSOCIATES

20

1 all the prior studies done asorbic acid completion
2 in my attempts to evaluate and understand that
3 methodology. And I have all those papers, and I
4 have gone through them, and that would be an
5 example of a more specific body of literature that
6 I have considered.

7 Q. Is that the first time you had ever
8 reviewed literature on that issue?

9 A. Yes, with the asorbic acid depletion
10 assay, that's correct.

11 Q. Are there any other documents that
12 you recall at this time?

13 A. Yeah, there are a number of different
14 scientific publications related to the various

15 issues within HIPO I, HIPO II and "Fate of
16 Nicotine." And I can provide you with the
17 bibliography, if you'd like, of all of those
18 scientific publications.

19 Q. Yes, I would like that.

20 A. Okay.

21 Q. Did you review any internal
22 documents, I guess I'll start with B&W first, any
23 internal B&W documents dealing with project HIPO?

24 A. I don't know if the Armatige and

A. WILLIAM ROBERTS, JR., & ASSOCIATES

21

1 Byrne critique or review is considered an internal
2 document, but I did review that.

3 Q. Okay.

4 A. And that's about the extent of it.

5 Most of it's been confined to the actual HIPO
6 studies themselves, and there's -- there are a
7 number of them. We can enumerate those studies.
8 They're not all studies. Some of those are
9 documents that relate to the HIPO studies. There's
10 about four or five.

11 Q. Okay. Could you go through that?

12 A. Yeah. Let me just name them for
13 you. I have them in front of me. Okay. The first
14 one is the "Final Report on Project HIPO I." The
15 second one is the "Final Report on Project HIPO,"
16 and I believe that was February of 1962 that that
17 was published. The next document is "Report No. 1

18 Regarding Project HIPO II"; that's June of 1962.
19 "Final Report on Project HIPO II," March of 1963.
20 Or is that May? Let me see. No, that's May of
21 '63, I apologize. "Fate of Nicotine in the Body,"
22 which is also May of 1963.
23 Q. Is that it?
24 A. There's another document, fairly

A. WILLIAM ROBERTS, JR., & ASSOCIATES

22

1 extensive comprehensive review article that is
2 compiled, "All The Known Pharmacological Effects Of
3 Nicotine." It's by Larson, Hague and Sylvet, and I
4 believe that was 1961.
5 Q. And how did you locate that document?
6 A. Well, I came across it, I was
7 reviewing through my preliminary review of the HIPO
8 project. I saw a Larson study cited and, of
9 course, I investigated it more and found this
10 fairly exhaustive review article on nicotine, and
11 so I went ahead and just obtained it.
12 Q. What's the date on that one? I don't
13 recall.
14 A. I believe it's '61, it's either '60
15 or '61.
16 Q. Okay. Have you ever searched for any
17 HIPO-related documents on the tobaccoresolution.com
18 Web site?
19 A. No, I've never been there.

20 Q. Have you ever looked for any
21 documents on the Briley Commerce Committee Web site
22 related to project HIPO?

23 A. No.

24 Q. I want to go back a little bit. When

A. WILLIAM ROBERTS, JR., & ASSOCIATES

23

1 you first reviewed the HIPO studies at the request
2 of the lawyers, is that when you were asked to be a
3 witness in the Blankenship case?

4 A. I don't recall the exact events. I
5 was initially just asked to look at the studies and
6 provide my opinions about them, and I don't know
7 exactly when I was actually named as a witness or
8 asked to become or be a witness in this particular
9 lawsuit.

10 Q. But it was after you expressed your
11 opinions, correct?

12 A. Yes. Well, no. Again, the timing of
13 this thing over the last year, I'm not real clear
14 on exact dates, but my understanding was that they
15 wanted to have someone evaluate the studies and be
16 able to discuss them in case there was litigation,
17 and that's about the extent of it. And I guess
18 over time it just evolved.

19 Q. Okay. I want to clarify one other
20 thing. I asked you specifically about project HIPO
21 I, but I wanted to ask you if you had dealt with
22 the issues raised in project HIPO II at any time

23 prior to your review of that material?

24 MR. SUFFERN: Objection. That's a

A. WILLIAM ROBERTS, JR., & ASSOCIATES

24

1 pretty vague question. You can answer it, if you
2 can.

3 A. Let me simplify. When I refer to
4 HIPO, I'm referring to HIPO I, HIPO II, "Fate of
5 Nicotine" and the other two or three documents that
6 relate to the HIPO project.

7 Q. Okay.

8 A. So that's an entire package. Let me
9 give you two other documents that I have reviewed.
10 "The Tentative Hypothesis on Nicotine Addiction"
11 by Hasselbach and Lebere; and I was -- I reviewed a
12 textbook by Mangan, M A N G A N, I believe; and
13 then the last document that I reviewed that was
14 provided to me was testimony, direct testimony, of
15 Dr. Feingold and I believe in some Florida
16 litigation.

17 Q. Would it have been in the Whittick
18 trial?

19 A. I don't know. All I had was a
20 transcript, about maybe 60 or 70 pages. I don't
21 know what case it referred to or was involved with.

22 Q. Is that the only time you've reviewed
23 prior testimony?

24 A. I've seen the testimony of Dr.

1 Hengefield, I guess a deposition of his.

2 Q. In the Felize case?

3 A. I don't recall the name of the
4 plaintiffs. I believe the date was 1997.

5 Q. Oh, okay, it wasn't Felize then. Who
6 all did you meet with in order to prepare for
7 today's deposition?

8 A. I met with Danielle Langhoff, Eileen
9 Morellin, Mike Suffern, those are the three
10 individuals.

11 Q. And are they all attorneys at
12 Dinsmore & Shohl?

13 A. No. Danielle is an attorney up at
14 Chadmore & Park, and I think Eileen is her
15 paralegal.

16 Q. Did they give you any documents?

17 A. Just copies that I had not brought
18 with me.

19 Q. Ones you have already referenced
20 today?

21 A. Yes.

22 Q. Did they give you any -- Strike
23 that.

24 To the best of your knowledge, please

1 give me the substance of your anticipated testimony
2 on the HIPO research.

3 MR. SUFFERN: Object to the general,
4 vague and general question. It's very broad, but
5 Dr. Budinsky, if you can answer it, please do.

6 A. Well, to make it simple, the first
7 opinion is that the HIPO study, the quality of
8 those HIPO studies is very poor, and that the
9 studies themselves are not valid, and you cannot
10 draw any meaningful conclusions from the data that
11 are contained within the HIPO studies. That's
12 number one.

13 Secondly, the results of the HIPO
14 study, conclusions or any kind of information
15 contained within the HIPO studies, would not have
16 had any impact or would not have been a relevant
17 body of data for the Surgeon General's deliberation
18 in the early 1960s.

19 And I guess the third opinion would
20 be that the HIPO results do not and cannot support
21 any opinions regarding addiction, withdrawal,
22 tolerance, dependency.

23 Q. Do you agree with the statement that
24 nicotine is an important component of taste?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 A. I wouldn't know.

2 Q. What year was HIPO conducted in; was
3 it 1961?

4 A. It was in the, I guess, early 1960s,
5 1960, '61. First publication in January of '62.

6 Q. Do you know who all from BAT Co was
7 involved?

8 A. No, I do not.

9 Q. Do you know how many people were
10 involved on the HIPO research effort?

11 A. The only people I'm aware of are the
12 actual authors of the documents.

13 Q. Are you aware of any other similar
14 research being sponsored by the tobacco industry in
15 1961?

16 MR. SUFFERN: Object to the broad,
17 general nature of the question. Object to the
18 form. Go ahead, Doctor.

19 A. Can you be more specific? I mean,
20 all I know at that time in 1960, '61, '62 and '63,
21 are the HIPO studies that were I guess paid for or
22 contracted out by the tobacco companies.

23 Q. Do you know which tobacco company
24 paid for it?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

28

1 A. I'm not real astute as to the
2 politics and all the companies and organizations,
3 but I believe it was the British American Tobacco

4 Company.

5 Q. Do you know who at BAT Co proposed
6 project HIPO?

7 A. No, I don't know who actually came up
8 with the idea.

9 Q. Did any of the HIPO research focus on
10 the taste of nicotine?

11 A. No.

12 Q. Do you know why project HIPO was
13 proposed?

14 A. Well, they were curious about some of
15 the pharmacological effects of nicotine and they
16 wanted to go ahead and evaluate those effects.
17 They were curious about the so-called relaxing
18 qualities that some people propose is the reason
19 why people smoke, and so they tried to blend these
20 pharmacological effects in with a rationale to
21 explain some of those subjective effects that
22 smokers discuss or claim.

23 Q. Now, you mentioned pharmacological
24 effects?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

29

1 A. Yes.

2 Q. Could you tell me exactly what that
3 is?

4 A. Pharmacological effect very simply is
5 the -- is any effect of a drug on the body, whether
6 it's a change in a biochemical pathway, whether

7 it's a change in enzyme kinetics, whether it's a
8 change in protein function. So it's a very broad
9 descriptor for a vast array of possible
10 physiological changes that chemicals can cause.

11 Q. Okay. I'm not trying to put words in
12 your mouth here, but is pharmacological effect the
13 same as drug effect?

14 A. Yeah, I mean, you could use them
15 interchangeably. Pharmacological effect is
16 probably more precise. Drug would be more related
17 to medications that are approved by the FDA or
18 over-the-counter.

19 Q. How long did it take to complete the
20 HIPO study?

21 A. I would have to guess. I would say
22 maybe a couple of years, but not looking at the
23 actual laboratory records, you cannot tell the
24 actual time frame that the studies were conducted

A. WILLIAM ROBERTS, JR., & ASSOCIATES

30

1 over.

2 Q. Was there any follow-up studies to
3 HIPO?

4 A. I'm not aware of any. You mean
5 conducted by Batell?

6 Q. Yes.

7 A. I'm not aware of any.

8 Q. To your knowledge, how many

9 scientists were studying the effects of nicotine on
10 the brain in 1961?

11 A. It would probably look like a Cecil
12 B. De Mille movie. I don't have an exact number.
13 You can look, for instance, in Larson, Hague and
14 Sylvet 1961 and get a sense as to all the various
15 researchers that were evaluating nicotine's
16 neuropharmacological effects, but I don't have a
17 precise number for you.

18 Q. Okay.

19 A. I just know it's fairly extensive.

20 Q. Now, does the HIPO research show that
21 nicotine bears an antiappetite effect on the body?

22 A. Well, quite frankly, the HIPO data
23 with respect to the weight gain and the food intake
24 are flawed studies, so you can't really look at

A. WILLIAM ROBERTS, JR., & ASSOCIATES

31

1 those data and come to any conclusions as to what
2 the effects of nicotine were at that time on those
3 rats.

4 Q. Okay. I guess you're referencing the
5 flaws. Can you give me more detail on the flaws?

6 A. Okay. Just give you -- let's go --
7 Let's discuss the food intake studies. You take a
8 group of rats, you inject them at sometime early in
9 the morning, 8:30, 9:30. An hour or two later, you
10 put them in a cage with powdered food and you
11 measure how much powdered food they eat over the

12 course of an hour.

13 Well, that's an incredibly difficult
14 experiment to do. Rats don't eat in the morning,
15 number one. Secondly, they don't like powdered
16 feed, so that study is basically worthless. And I
17 don't think that the HIPO researchers understood
18 the problem they would have with trying to conduct
19 a feeding study in rats with a powder diet early in
20 the morning following a basically subconvulsant
21 dose of nicotine.

22 So any kind of conclusions based upon
23 this data are essentially suspect. You can't
24 really, you can't draw any valid conclusions from

A. WILLIAM ROBERTS, JR., & ASSOCIATES

32

1 the studies. That's an example of flaws with the
2 HIPO study with respect to the food intake.

3 Q. Do you have any other flaws you can
4 go into detail about?

5 A. Well, yeah. We can go into all of
6 those. For instance, they don't tell you the
7 strain of rat. They don't discuss food intake
8 during the weight gain study. You have no idea
9 what they're taking in in terms of food, water.
10 They don't discuss the morbidity of the animals.
11 If you give an animal a .5 to 4 milligram to
12 kilogram dose, it probably knocks them down for a
13 little bit or causes some morbidity, so you have to

14 have clinical observations to go along with the
15 study's results. Those are missing.
16 The studies are incredibly cryptic
17 regarding any kind of methodological discussion so
18 an investigator could go in and repeat the
19 studies. If you'd like, we can go through those
20 studies page by page, and I'll start recalling a
21 lot more detail if I actually see the data in front
22 of me.

23 Q. Is that the best you can do without
24 seeing the data?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

33

1 A. Well, the problem is, there's just so
2 much detail in these studies and I'm getting too
3 old to remember everything anymore, so I always
4 need clues. I always like to go look at the actual
5 tables and graphs and read the text and sort of jog
6 some recall as to what was wrong with these
7 studies.

8 Q. Okay, why don't we do that. I think
9 you have a copy there, but I included some copies
10 in my exhibits in case you didn't.

11 A. Okay. Well, let's just go to the
12 "Final Report On Project HIPO I."

13 MR. SUFFERN: Let's let him ask a
14 question, Dr. Budinsky.

15 THE WITNESS: Sorry.

16 MR. LOFSTEAD: I guess we're still

17 on the same question. I wanted him to go through
18 the flaws he observed.

19 MR. SUFFERN: Well, I mean, Counsel,
20 obviously, it's your examination. If you want him
21 to go through page by page and point out the
22 numerous flaws, we can do that. I can tell you
23 it's going to take us several hours. If you'd like
24 him to do that, he can do that. If you'd rather

A. WILLIAM ROBERTS, JR., & ASSOCIATES

34

1 direct his attention to particular portions of the
2 work, you know, again, it's your deposition, but I
3 just want to mention that, if you want him to go
4 through page by page, we could be here for hours.
5 So I'm sorry, anyway, is there a question pending?
6 BY MR. LOFSTEAD:

7 Q. The question was, I wanted the Doctor
8 to just point out the main flaws that he observed
9 in the HIPO study.

10 MR. SUFFERN: And we're speaking now
11 about the "Final Report On Project HIPO I"?

12 Q. Yes.

13 A. Okay. That's the report that's
14 published in January of 1962. We can start on page
15 22. Are you ready?

16 Q. Yeah.

17 A. I'm sorry. Let's go down to the
18 second paragraph on page 22, the second sentence.

19 It starts out, it says, It is possible to make
20 obese hyperphagic rats by lesioning the center that
21 normally provokes appetite. With that in mind,
22 let's go to -- it's actually page 33, but it's
23 Figure 8. Okay, are you there?
24 Q. Yeah.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

35

1 A. Okay. This graph depicts the results
2 of weight changes in grams in rats that have been
3 lesioned in the hypothalamus say versus sham
4 operated rats which do not receive a lesion. First
5 off, these investigators never did any kind of
6 histopathological verification that the lesions
7 were actually placed in the correct location in the
8 hypothalamus say, which is a fundamentally critical
9 observation and validation step, so that's
10 missing. We have no idea where the probe is. As
11 far as I know, they could have cauterized the
12 tonsils of these animals.

13 The next thing is, if we look at the
14 change in weight over that essentially a 34-day
15 period, what we notice here is that the lesioned
16 rats appear to have a little or slight increase in
17 the rate of weight gain between Day 0 and Day 14,
18 but then they resume the normal weight gain that
19 the sham operated rats did. Now, this is a
20 problem, because if the rats had been properly
21 lesioned, they would take off and become incredibly

22 obese, look like little footballs, and they would
23 not resume normal weight gain at Day 14. So
24 something is obviously wrong with this particular

A. WILLIAM ROBERTS, JR., & ASSOCIATES

36

1 methodology. No explanation for why this
2 particular model, this obese rat model using
3 lesions, didn't work. So that's a serious flaw
4 that would preclude any investigator from relying
5 upon these data. That's one example. If have you
6 questions about that figure, just let me know. I
7 can discuss it more.

8 Q. Okay.

9 A. I'm now on page 23, just reviewing
10 some of the text. Okay. Part of the hypothesis
11 that they're developing here on page 23 is, if you
12 lesion the rats, then nicotine should not work. In
13 other words, you're removing the link in the
14 hyperthalamic pituitary adrenal axis.

15 And what this data actually showed is
16 that, after they lesioned these rats, nicotine
17 still purportedly suppressed food intake. Well, if
18 the lesions had been correctly placed or if their
19 hypothesis was correct, nicotine administration
20 post lesioning of the rats would have no effect on
21 suppressing food intake. So it's another serious
22 flaw in this particular component of HIPO I.

23 I'm looking at page 24, more

A. WILLIAM ROBERTS, JR., & ASSOCIATES

37

1 at the bottom of page 24, the last paragraph, that
2 I guess everybody went home over Christmas and
3 forgot to do the study, so the rats that were
4 treated with nicotine that allegedly had suppressed
5 food intake and, hence, weight gain, somehow
6 resumed their weight gain. And there is a
7 little -- If we go to the Figure 6 on the next
8 page, they indicate, with interruption of the
9 injection -- About the middle bottom of that graph
10 in Figure 6.

11 Q. Um-hmm.

12 A. They imply that those rats somehow
13 resumed a more rapid weight gain over the two-week
14 Christmas holiday. Now, if you look at the study
15 or the results on Figure 6, there are a number of
16 things that jump out at you. First off, we have
17 absolutely no standard deviations, no statistical
18 evaluation of the data. So I have no idea, you
19 know, what the range of variability is with the
20 weight gains within the treated and control
21 animals. I don't even know the strain of rat that
22 they're using, which would be of very much
23 interest, of great interest. And there's simply no
24 statistical evaluation of these data. So this is

1 at best a preliminary presentation of data without
2 any of the necessary components by which a
3 scientist would need to evaluate these data
4 correctly.

5 MR. SUFFERN: Counsel, this is Mike
6 Suffern. I really want to interpose an objection
7 here to this, to the question that's asking him to
8 simply point out all the flaws in the studies. I
9 think that that question is so broad, it calls for
10 an incredibly long narrative response, and I
11 think -- I don't think he should be required to
12 simply sit here and lecture about all the flaws in
13 the studies for the next several hours.

14 I think that that improperly calls
15 for a narrative response, and I would just urge
16 you, Counsel, to ask him questions, if you'd like
17 to move this deposition along.

18 MR. LOFSTEAD: Okay. Well, what I
19 was doing, is I was looking at the expert
20 disclosure and it says he may testify as to the
21 various and numerous flaws inherent in the HIPO
22 study, and I just wanted detail on some of those
23 flaws.

24 MR. SUFFERN: Would you like him to

1 try to generalize or do you want to ask him page by
2 page? I mean, if you want to ask him page by page,
3 I would at least, at least ask that you refer to a
4 page and ask him a question about it, so we don't
5 get into this situation where we're having an
6 open-ended question that calls for an answer that
7 could potentially last for hours. If you want him
8 to generalize, I don't know, perhaps he could
9 generalize.

10 BY MR. LOFSTEAD:

11 Q. Why don't we try to generalize the
12 major flaws of the HIPO study.

13 A. Okay, the major flaw. You want me to
14 start?

15 Q. What you haven't covered.

16 A. The big picture flaws with HIPO, HIPO
17 I and HIPO II, regards method validation. Whenever
18 you're doing or proposing scientific research, you
19 have to rely upon some type of methodology to
20 conduct the experiment. That methodology has to be
21 well-known, well worked out, relevant, applicable
22 to the type of experiment you're going to conduct.

23 For example, they did the asorbic
24 acid depletion test in the adrenal gland on these

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 rats. They borrowed from prior research that had
2 been done on this particular method developed for

3 the hormone ACTH. They did no method validation to
4 ascertain if they could use or adopt this method
5 for testing nicotine potential effects.

6 On that level alone, this experiment
7 regarding asorbic acid depletion should be thrown
8 out. No investigator should rely upon these datas
9 because you don't know if that's a valid method for
10 measuring nicotine effects, you don't know what
11 you're measuring. You might be measuring changes
12 in asorbic acid, but you don't know why those are
13 occurring.

14 Again, method validation is a very
15 significant component of any research project, and
16 if your laboratory doesn't have recognized
17 expertise or capability in that area, you cannot
18 conduct that research without proving to the world
19 that you're capable of doing so, and these
20 researchers have failed do that. So that's
21 probably the most significant factor in validating
22 the results of the HIPO studies.

23 If you go to basic housekeeping
24 issues with respect to the methods, it's standard

A. WILLIAM ROBERTS, JR., & ASSOCIATES

41

1 practice to tell the reviewer or the reader or the
2 peer reviewer the strain of animal, the sex of the
3 animal, the route of administration, to use
4 statistical means to test the data, to clearly

5 articulate the methods you are using so they can be
6 reproduced by other investigators. So that would
7 be an example of another serious problem with the
8 HIPO studies.

9 The third problem which I find very
10 disturbing is the apparent incompetence of these
11 investigators analyzing their own data. To give
12 you an example, their hypothesis holds that, if you
13 lesion the animals and you give nicotine,
14 nicotine's effects should not be seen. In effect,
15 what happened is, when they gave nicotine to the
16 lesioned animals, they still saw the effect of
17 nicotine, which directly rebuts or refutes their
18 hypothesis.

19 At one time they say, we recognize
20 this, that nicotine does not work through the
21 hypothalamus, and at the same time, they say
22 nicotine does work through the hypothalamus.
23 That's a contradictory statement and it's just
24 wrong. So I have a serious problem with the data

A. WILLIAM ROBERTS, JR., & ASSOCIATES

42

1 interpretation by these Batell scientists.

2 Probably another issue that's related
3 somehow to the methods validation would be the
4 failure to adequately cite and discuss all the
5 prior research that underlies what they attempted
6 to do at Batell. There are numerous studies
7 published prior to the Batell scientists embarking

8 on the research in which other researchers had
9 essentially done these types of studies, and, yet,
10 they were either ignored or not discussed. So
11 that's a problem.

12 And I think that that is overall my
13 general feel about these studies and opinions, and
14 then we could get into the detail study by study to
15 discuss the methodological flaws and the failure to
16 recognize data and to interpret it correctly.

17 Q. I think that's good for now. Let's
18 see. Do you believe nicotine is dependency
19 producing?

20 MR. SUFFERN: I object to the extent
21 that this is outside of his area of expertise. If
22 you can answer, Doctor, go ahead. It's beyond the
23 scope. I should clarify my objection. It's beyond
24 the scope of what he's been asked to review for

A. WILLIAM ROBERTS, JR., & ASSOCIATES

43

1 this case.

2 A. Yeah.

3 MR. SUFFERN: If you can answer,
4 Doctor, go ahead.

5 A. I really feel kind of out of place
6 answering that question. I do have opinions and
7 maybe more personal because I have not reviewed all
8 the scientific data to come up to what I believe is
9 the best descriptor of the nicotine situation, of

10 the cigarette situation. So I would like to defer
11 that to some other expert who is going to handle
12 that particular issue.

13 Q. Addiction is outside of the scope of
14 your expertise?

15 A. No, it is not. With regards to the
16 interpretation of basic research in HIPO I and how
17 that applies to the theories and the concepts of
18 addiction, that's clearly not the case. I am more
19 than capable of discussing that. But with regards
20 to issues of addiction that fall outside of my
21 pharmacological knowledge, sociology, you name it,
22 psychiatric, psychological factors, yes, I'm not
23 prepared to talk about those particular issues and
24 how they affect dependence, addiction, withdrawal,

A. WILLIAM ROBERTS, JR., & ASSOCIATES

44

1 et cetera.

2 Q. Is it your testimony that project
3 HIPO contained nothing of scientific value in its
4 conclusions?

5 A. No, that's not correct. I think the
6 "Fate of Nicotine" has some interesting
7 pharmacokinetic data; although, it probably would
8 need a substantial amount of work to fix the
9 problems that are in it. But my opinion is HIPO I
10 and HIPO II are essentially worthless.

11 Q. During your review of internal
12 documents, did you search for any documents or ask

13 for any documents related to the sharing of
14 research with the Surgeon General?

15 MR. SUFFERN: I object to the
16 predicate. I don't think it's been established
17 that he reviewed internal documents, but go ahead
18 if you can answer that, Doctor.

19 A. Well, the only internal documents I
20 guess you're referring to are the actual HIPO
21 documents themselves, those, I did review those,
22 and this is basically the limit on my task. I
23 wasn't interested in anything else that had to do
24 with this project, I guess. I was more interested

A. WILLIAM ROBERTS, JR., & ASSOCIATES

45

1 in looking at the basic research and coming up with
2 information on the studies to adequately and
3 properly evaluate them.

4 Q. So you didn't review any documents
5 dealing with sending the HIPO studies to the
6 Surgeon General?

7 A. No, I'm not aware of those documents.

8 Q. Have you ever heard of the Frank
9 Statement?

10 A. No, I have not.

11 Q. It's marked as Exhibit 5 in my
12 exhibits, but I guess it would be Exhibit 2 for the
13 deposition, if you can go ahead and pull that out.
14 (Budinsky Deposition Exhibit No. 2 was marked for

15 identification.)

16 A. It's dated December 28, 1950

17 something?

18 Q. 'Fifty-three.

19 A. Yeah, I have that in front of me.

20 Q. And you've never seen this document?

21 A. No, I have not.

22 Q. Do you see down at the bottom where
23 it says, it begins with, "We accept an interest in
24 people's health as a basic responsibility paramount

A. WILLIAM ROBERTS, JR., & ASSOCIATES

46

1 to every other consideration in our business"?

2 A. Yes, I do.

3 Q. Do you see, "We believe the products
4 we make are not injurious to health," and then up
5 on the top of page 2, "We always have and always
6 will cooperate closely with those whose task it is
7 to safeguard the public health"?

8 A. Yes, I do.

9 Q. Signed by B&W, page 3?

10 A. I have the Tobacco Industry Research
11 Committee; is that what you're referring to? Okay,
12 there's a Brown & Williamson Tobacco Corporation
13 designation under there.

14 Q. Yes.

15 A. Okay. I don't know who's the signee
16 on this. There's a -- But go ahead.

17 Q. Do you have any opinion as to whether

18 B&W intended to share the HIPO research reports
19 with the Surgeon General?

20 MR. SUFFERN: Objection. It's
21 outside the scope of his testimony. Go ahead and
22 answer, if you can, Doctor.

23 A. I wouldn't know what the conclusions
24 were regarding sharing this with anybody.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

47

1 Q. You haven't had any discussions
2 dealing with sharing this information with the
3 Surgeon General?

4 A. Sharing is sort of an incorrect
5 term. When companies do or conduct their own
6 research, they have essentially a right to put that
7 research out into the public domain. It's quite
8 common practice for most companies that develop
9 drugs, chemicals or chemical-containing products to
10 have internal research that never sees the light of
11 day, but provides a basis for the company to
12 proceed. So sharing is not exactly the correct
13 term, but go ahead.

14 Q. Why don't you tell me what the
15 correct term would be.

16 A. Well, you just put it --

17 MR. SUFFERN: I object. I don't
18 understand the question. I object to the form of
19 the question.

20 Q. I was just confused, so I wanted to
21 know what was wrong with share.

22 A. Yeah, I guess I was a little bit
23 confusing. The companies that do basic research
24 in-house or have a contract lab conduct research

A. WILLIAM ROBERTS, JR., & ASSOCIATES

48

1 for them typically have two routes or actually a
2 number of routes. They can take that contract
3 research and use it internally or they can submit
4 it for peer-review publication and submit it for a
5 publication in scientific journals.

6 I guess the third avenue for most
7 companies that do in-house or contract lab research
8 is to look at the data and discard it because of
9 validity, that kind of thing. So sharing is not a
10 quite accurate. There's a number of different ways
11 you can utilize research conducted by in-house in a
12 company.

13 Q. Can you think of any scientific
14 reason why the HIPO documents should have been kept
15 secret?

16 MR. SUFFERN: Objection, object to
17 the form of the question. It's argumentative. Go
18 ahead.

19 A. I don't think it's secret. I think
20 if you want to throw it in a waste can, that's
21 probably a better way to describe it. Bottom line
22 is, they probably looked at the data, especially

23 after getting Armitage and Byrne's critique, and
24 they were probably not too pleased with the results

A. WILLIAM ROBERTS, JR., & ASSOCIATES

49

1 and conduct of the study, so certainly, you don't
2 want to submit flawed research to anybody.

3 Q. If the research was flawed and not
4 honorable, can you think of any reason why it would
5 be kept in law department files until the Surgeon
6 General's report was filed in 1964?

7 A. I don't --

8 MR. SUFFERN: Object to the form of
9 the question. It's compound, it's confusing.
10 Doctor, go ahead, if you can answer it.

11 A. I don't have an answer.

12 Q. Have you ever heard of the term ban
13 of secrecy?

14 A. No.

15 Q. Now, to your knowledge, was the HIPO
16 research ever shared with the Surgeon General?

17 A. I don't have any way to answer that
18 yes or no. I don't know.

19 Q. As a toxicologist, do you agree that
20 science is not advanced whenever information is
21 withheld or suppressed?

22 MR. SUFFERN: Object to the form of
23 the question.

24 A. Yeah, that's sort of a philosophical

1 question. It has to do with the quality and the
2 importance of the data. Many drug companies, for
3 instance, have internal research that they keep as
4 a proprietary issue and don't disseminate that
5 research. I think in general, if they are good
6 data and useful data, then it should eventually be
7 made public; but again, it depends on the quality
8 of the data and the reason for the research.

9 Q. So if data is flawed, is it okay to
10 suppress that information?

11 A. You don't suppress it. You throw it
12 away.

13 Q. Do you know if the HIPO research was
14 used as a basis for follow-up research?

15 A. I think you already asked that
16 question. With respect to Batell, I have no
17 information that Batell conducted further
18 experiments along the lines of HIPO I, 2 or "Fate
19 of Nicotine."

20 Q. I should have been clear. I meant
21 BAT Co, actually, in this question.

22 A. BAT Co, no, I don't know that.

23 Q. As a toxicologist, do you believe
24 that cigarettes cause lung cancer?

1 MR. SUFFERN: Objection. It's
2 beyond the scope of his testimony. Go ahead and
3 answer, if you can, Doctor.

4 A. Certain types of lung cancer,
5 provided a lot of other considerations are taken
6 into account.

7 Q. Do you believe cigarettes cause
8 emphysema?

9 MR. SUFFERN: Same objection.

10 A. Essentially the same answer, yes, I
11 do; but then, there's a lot of other factors that
12 have to be evaluated.

13 Q. Do you believe cigarettes contain
14 hazardous substances?

15 MR. SUFFERN: Same objection. Go
16 ahead, if you can answer, Doctor.

17 A. Well, defined by dose, yes.

18 Q. Can you name any of the hazardous
19 substances?

20 MR. SUFFERN: Object to the extent
21 that this question is outside the scope of Dr.
22 Budinsky's testimony, but go ahead and answer, if
23 you can, Doctor.

24 A. If you wanted to talk about the

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 combustion products, there are a number of
2 chemicals that are potentially toxic, a number of
3 PAHs, polyaromatic hydrocarbons, that are
4 components of cigarette combustion products,
5 nitrosamines, formaldehyde. There's a number of
6 them. We could probably go through a list of them
7 and talk about these.

8 Q. Would this be true for all
9 cigarettes, irrespective of brands?

10 A. Well, you know, I don't know about
11 all cigarettes. I would assume that there's a
12 certain number of common combustion products for
13 each cigarette and they would vary by amount
14 depending on the type of tobacco that's used, but
15 that's a complex question.

16 Q. Does smoking cigarettes increase
17 one's risk of contracting lung cancer?

18 MR. SUFFERN: Objection. This
19 witness is not an epidemiologist. Go ahead and
20 answer, if you can, Doctor. It's beyond the scope
21 of his testimony.

22 A. It depends on the specifics. If you
23 want to name a number of pack years and all the
24 other things you'd have to look at for a smoker,

A. WILLIAM ROBERTS, JR., & ASSOCIATES

53

1 yeah, then I could answer the question. But just
2 as a general, does it increase the risk, that's too
3 broad for me to answer.

4 Q. How about narrow that to a
5 2-pack-a-day smoker for 20 years?

6 A. Yes, I would agree that it increases
7 the risk of certain types of lung cancer.

8 Q. Do you consider lung cancer to be a
9 serious disease?

10 A. Yeah, I would think most people would
11 agree with that.

12 Q. In light of the increased risk of
13 disease from smoking, do you agree it would be a
14 good thing for a smoker to get regular medical
15 exams to specifically check for these diseases?

16 MR. SUFFERN: Objection. Counsel,
17 this is just -- This calls for a legal conclusion.
18 It's absolutely inappropriate to be parroting your
19 theory of the case through this witness. He's
20 identified his areas of expertise and is willing to
21 answer questions regarding his areas of expertise.
22 I just, I don't know where we're going, and I just
23 don't know how long we're going to keep going
24 there. But, Dr. Budinsky, if you can answer, go

A. WILLIAM ROBERTS, JR., & ASSOCIATES

54

1 ahead.

2 A. Well, let me answer, I have not been
3 asked to evaluate issues with respect to medical
4 monitoring regarding lung cancer, so I would just
5 as soon not answer that question right now.

6 Q. I just want to backtrack to one thing
7 you discussed earlier. I wanted to clarify
8 something. You said -- and I don't recall exactly,
9 but we were discussing the drug effect of
10 nicotine.

11 A. Pharmacological effect.

12 Q. Right. That was the reason that HIPO
13 was proposed?

14 A. Yes.

15 Q. And what year was that; 1961?

16 A. Yeah, somewhere in that time frame.

17 I don't know exactly how this set of studies
18 transpired, but some were in the early '60s.

19 Q. Do you know if you're scheduled to be
20 deposed in any other cases at this time?

21 A. No, I don't.

22 Q. Are you claiming to be an expert for
23 B&W in other cases?

24 A. I'm not aware of that.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

55

1 MR. SUFFERN: Well, I think that
2 that's all I have.

3 MR. SUFFERN: Anyone else on the
4 call have any questions for Dr. Budinsky? I have
5 no questions. I guess we're concluded. Thank you,
6 Counsel.

7 MR. LOFSTEAD: Thanks.

8 THE WITNESS: Thank you.

9 MR. SUFFERN: We'll sign and reserve
10 signature, and I'll take a copy of the transcript.

11

12

13

14

15 ROBERT BUDINSKY, R.Ph., Ph.D.

16 - - -

17 DEPOSITION CONCLUDED AT 10:08 A.M.

18 - - -

19

20

21

22

23

24

A. WILLIAM ROBERTS, JR., & ASSOCIATES

56

1 C E R T I F I C A T E

2 STATE OF OHIO :

3 : SS

4 COUNTY OF HAMILTON :

5 I, LISA CONLEY, RMR-CRR, the undersigned, a
6 duly qualified and commissioned notary public
7 within and for the State of Ohio, do hereby certify
8 that before the giving of his aforesaid deposition,
9 the said ROBERT BUDINSKY, R.Ph., Ph.D., was by me
10 first duly sworn to tell the truth, the whole truth

11 and nothing but the truth; that the foregoing is
12 the deposition given at said time and place by the
13 said ROBERT BUDINSKY, R.Ph., Ph.D.; that said
14 deposition was taken in all respects pursuant to
15 Notice to Take Deposition; that said deposition was
16 taken by me in stenotypy and transcribed by
17 computer-aided transcription under my supervision;
18 that the transcribed deposition is to be submitted
19 to the witness for his examination and signature;
20 that I am neither a relative of nor attorney for
21 any of the parties to this cause, nor relative of
22 nor employee for any of their counsel, and have no
23 interest whatever in the result of the action.
24

A. WILLIAM ROBERTS, JR., & ASSOCIATES

57

1 IN WITNESS WHEREOF, I hereunto set my hand
2 and official seal of office at Cincinnati, Ohio,
3 this

4 day of , 2000.

5

6

7

8 MY COMMISSION EXPIRES: LISA CONLEY, RMR-CRR

9 JULY 29, 2004. NOTARY PUBLIC-STATE OF OHIO

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

A. WILLIAM ROBERTS, JR., & ASSOCIATES